

#### § 229.4

gear or gillnet gear capable of catching multispecies from the areas and for the times specified in § 229.33(a)(1), (a)(3), (a)(6), and (a)(8). This prohibition also applies to areas where pingers are required, unless the vessel owner or operator complies with the pinger provisions specified in § 229.33 (a)(2) through (a)(5) and (a)(7). This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove gillnet gear from the areas and for the times as specified in § 229.34 (b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in § 229.34(b) unless the gear complies with the specified gear restrictions set forth in the provisions of paragraphs (b)(1)(ii) or (iii), (b)(2)(ii) or (iii), (b)(3)(ii) or (iii), or (b)(4)(ii) or (iii) of § 229.34.

(p) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in areas where pingers are required, as specified under § 229.33 (a)(2) through (a)(5) and (a)(7), unless the operator on board the vessel during fishing operations possesses and retains on board the vessel a valid pinger training authorization issued by NMFS as specified under § 229.33(c).

(q)—(r) [Reserved]

(s) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet gear from the areas specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

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(2) Complies with the gear restrictions specified in § 229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Cape Hatteras Special Research Area unless the vessel is in compliance with the observer and research requirements specified in § 229.36(d).

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39184, July 22, 1997; 63 FR 66487, Dec. 2, 1998; 64 FR 7552, Feb. 16, 1999; 64 FR 9086, Feb. 24, 1999; 65 FR 80377, Dec. 21, 2000; 67 FR 1313, Jan. 10, 2002; 67 FR 59477, Sept. 23, 2002; 71 FR 24796, Apr. 26, 2006; 72 FR 57180, Oct. 5, 2007; 74 FR 23357, May 19, 2009; 75 FR 7396, Feb. 19, 2010]

#### § 229.4 Requirements for Category I and II fisheries.

(a) *General.* (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the FEDERAL REGISTER announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing gear may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.

(v) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(vi) A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(3) If a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a

fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

(c) *Address.* Unless the granting and administration of authorizations under this part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration and renewal forms should be sent to the NMFS Regional Offices as follows:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907-586-7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; telephone: 206-526-4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; telephone: 562-980-4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 978-281-9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727-570-5312.

(d) *Issuance.* (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., non-integrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§ 229.6 and 229.7

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

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(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt.

(e) *Authorization Certificate and decal requirements.* (1) If a decal has been issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(f) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(g) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS

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personnel, a designated contractor or an official observer, or authorized otherwise by a scientific research permit that is in the possession of the operator.

(h) *Monitoring.* Authorization Certificate holders must comply with the observer or other monitoring requirements specified under § 229.7.

(i) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(j) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(k) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(l) *Expiration.* Authorization Certificates expire at the end of each calendar year.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 46, Jan. 2, 1997; 64 FR 9086, Feb. 24, 1999]

### § 229.5 Requirements for Category III fisheries.

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official observer, or authorized otherwise by a scientific research permit in the possession of the operator.